



August 24, 2009

Hand Delivered

Mr. Jim McLean, Chairman and
Mr. Rick Bernhardt, Executive Director
Metro Planning Commission
800 Second Avenue South
Nashville, Tennessee 37201

RE: *Scottsboro/Bells Bend Detailed Design Plan Alternative Development Area Policy and
May Town Center Specific Plan Zone Change Application for May Town Center*

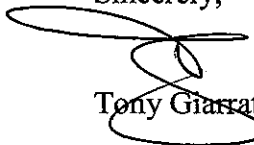
Dear Chairman McLean and Executive Director Bernhardt:

I am writing to re-submit our request for rehearing on the votes concerning the Scottsboro/Bells Bend Detailed Design Plan Alternative Development Area policy ("ADA") and Specific Plan Zone Change Application ("SP"), submitted by Bells Landing Partners, LLC ("Applicant").

We initially requested a rehearing by letter dated July 8, 2009. You replied by letter dated July 15, 2009, agreeing to place this issue on the Agenda for consideration. We've discussed the voting procedures with Metro Legal and believe the rules are clear that a motion and second may be made by any member of the Commission inasmuch as there was no "majority vote" within the meaning of the Commission rules. If this is not your interpretation, please let us know in writing.

Applicant respectfully requests that this issue not be placed on the Agenda for consideration by the Commission for up to sixty (60) days to allow Applicant time to submit a revised plan to the Commission which depicts the reduced scope described in our letters dated July 14 and 21, 2009.

Sincerely,



Tony Giarratana

Attachments:

July 8, 2009 Letter to Metro Planning Commission
July 14, 2009 Letter to Metro Planning Commission
July 15, 2009 Letter from Metro Planning Department
Excerpts from the Metro Planning Commission Rules

cc: The Honorable Lonnell R. Matthews, Jr., Councilmember, District 1
Mr. Doug Sloan, Esq., Metro Legal Department
Ms. Ann Hammond, Metro Planning Department
Mr. Bob Leeman, Metro Planning Department
Ms. Jennifer Carlat, Metro Planning Department
Mr. Craig Owensby, Metro Planning Department
Ms. Trish Brooks, Metro Planning Department



JUL 9 2009

July 8, 2009

Hand Delivered

Mr. Jim McLean, Chairman and
Mr. Rick Bernhardt, Executive Director
Metro Planning Commission
800 Second Avenue South
Nashville, Tennessee 37201

RE: *Scottsboro/Bells Bend Detailed Design Plan Alternative Development Area Policy and
May Town Center Specific Plan Zone Change Application for May Town Center*

Dear Chairman McLean and Executive Director Bernhardt:

On June 25, 2009, the Commission held a rather lengthy public hearing and cast several votes concerning the Scottsboro/Bells Bend Detailed Design Plan Alternative Development Area policy ("ADA") and Specific Plan Zone Change Application ("SP"), submitted by Bells Landing Partners, LLC ("Applicant"). On behalf of the Applicant, I respectfully request a July 23, 2009, rehearing of the Commission's disposition of the ADA and SP.

Please understand that this request is not made lightly. Indeed, taking into consideration what transpired during the Commission's deliberations, and given the eventual outcome of that process, I believe fairness, fundamental due process principles, and the Commission's own guiding rules and procedures weigh heavily in favor of a rehearing.

As you recall, after about six hours of meeting and public hearing the gavel fell and, at around 10:00 in the evening, the first vote was called. During the ensuing 45 minutes of motions, debate and voting it became apparent to many in attendance that several procedural irregularities most likely undermined the entire voting process. To be sure, the late hour had an obvious impact on the Commission members as well, and for good reason. For example, you may remember several Commission members expressing such sentiments as "It's late," "I'm tired," "Don't confuse me," and "It's confusing," all the while rubbing their eyes and shaking their heads. Many in the room that evening certainly shared these frustrations.

Unfortunately, what occurred following the public hearing proved confusing, conflicting, and inconsistent. Some of the more apparent procedural errors include negative and double-negative motions, a main motion that incorrectly presented substantially the same question as the one immediately preceding it, out of order procedures, improper interruptions, inappropriate characterizations, and several inconsistent and ambiguous votes.

Mr. Jim McLean, Chairman and
Mr. Rick Bernhardt, Executive Director
July 8, 2009
Page Two

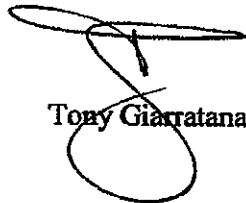
When all was said and done, the irregular procedures employed by some Commission members may have had an adverse impact on the ultimate outcome of both the hearing and the vote. The procedures leading up to the many votes and the votes themselves clearly violated the *Rules and Procedures of the Planning Commission* and *Robert's Rules of Order*, both instrumental and decisive in governing and guiding the procedural due process aspects and requirements of any public hearing and deliberative body. In fact, the three votes which followed the first of the two motions on the ADA (i.e., the double-negative motion) was arguably an affirmative motion with an affirmative result approving the ADA which, in turn, would have led to approval of the SP.

I respectfully submit that all of this irregularity, some examples of which are referenced above, adversely impacted the process and served to confuse its outcome, blur the intent of the body as a whole, and undermine the public's trust and confidence.

Additionally, in an effort to respond to the concerns expressed by the Commission regarding the density of the SP, Applicant agrees to reduce the density of the SP. Options for reducing density, at the election of the Commission, may include (1) deleting Phase V, or (2) reducing the total square footage of commercial space and the number of residential units and hotel rooms by 15%.

To maintain the integrity of the process, to instill public confidence, to ensure the Applicant is guaranteed its fundamental due process rights, to promote a concept of basic fairness, and to correct the procedural errors that occurred throughout the evening, Applicant requests a new vote on the ADA and the SP. Under the circumstances, Applicant does not feel a new public hearing is required (both having been properly closed by the Commission) but is agreeable to a rehearing if deemed necessary or preferred by the Commission to clear up what is tantamount to a very clouded record. Thank you.

Sincerely,



Tony Giarratana



July 14, 2009

Via Hand Delivery and E-mail

Mr. Jim McLean, Chairman and
Mr. Rick Bernhardt, Executive Director
Metro Planning Commission
800 Second Avenue South
Nashville, Tennessee 37201

RE: *Scottsboro/Bells Bend Detailed Design Plan Alternative Development Area Policy and
May Town Center Specific Plan Zone Change Application for May Town Center*

Dear Chairman McLean and Executive Director Bernhardt:

Please allow this letter to expand and elaborate upon my previous letter, dated July 8, 2009, in which, among other grounds, we set forth the changed conditions and new information that are among several causes for a rehearing of the above-referenced matter pursuant to Section VI (K) of the Rules and Procedures of the Metropolitan Planning Commission.

More specifically, as raised in the earlier letter, the changed conditions and/or new information relate directly to the issue of the project's density and the concerns related thereto as expressed by one or more Planning Commission Members during the period of discussion and debate just prior to voting to amend the Scottsboro/Bells Bend Detailed Design Plan concerning the Alternative Development Area ("ADA").

During the course of that discussion and debate on the ADA, one or more Planning Commission Members voiced concerns about the density of the project, known as May Town Center and embodied in the SP, suggesting that they felt that the project was too dense.

The issue of density appeared to be a critical factor to one or more Planning Commission Members. Unfortunately, however, information regarding the Applicant's willingness and flexibility to address issues of density was not brought before the Commission. As set forth in the letter dated July 8, 2009, the Applicant is agreeable to addressing these concerns and reducing the density of the project. At the election of the Planning Commission, options may include (1) deleting Phase V in its entirety or; (2) reducing the total square footage of commercial space and the number of residential units and hotel rooms by 15%. These options are not exclusive, but represent two examples of alternative density proposals acceptable to the Applicant. Most fundamentally, the Applicant is prepared to accommodate Commission concerns with respect to this issue.

Mr. Jim McLean, Chairman and
Mr. Rick Bernhardt, Executive Director
July 14, 2009
Page Two

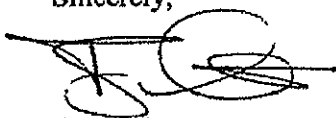
This information was not before the Commission when deliberating on the above-referenced matters. Based on its relevance to the overall matter before the Commission, as well as the direct relevance to the questions raised during deliberations on the ADA, we respectfully request this significant new information be brought to the attention of the Planning Commission and provide the basis for a rehearing on the ADA and the SP.

That a rehearing on both the ADA and the SP is the appropriate course is apparent from the manner in which the original deliberation and voting unfolded. Virtually all of the Commission's discussion took place in the context of debate on the ADA—including the discussion of density—at which time, "May Town" was frequently referenced and cited as the basis for the deliberations. Issues of all sorts were raised in those discussions, regardless of whether they were more technically suited to debate on the SP application. Discussion of the two matters before the Commission—the ADA and the SP—were so combined and integrated as to be one seamless discussion prior to the series of votes on the ADA. Indeed, discussion was virtually non-existent when the SP came up for a vote. It is overwhelmingly clear that, as a practical matter, the votes on the ADA were functionally votes on the SP as well. Indeed, the votes on the ADA were, in effect, treated as disposing of all matters before the Commission.

For the above-referenced reasons, we respectfully submit that a rehearing in which new information is brought before the Planning Commission shall include a reconsideration of both the ADA and the SP. We have other information and materials supporting our request for a rehearing that we would be pleased to provide the Metro Planning Commission if desired.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tony Giarratana', with a stylized flourish at the end.

Tony Giarratana



**METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY**

Planning Department
Metro Office Building
800 Second Avenue South
Nashville, Tennessee 37201

July 15, 2009

Mr. Tony Giarratana
201 4th Avenue North
Suite 1100
Nashville, TN 37219

RE: A request for rehearing of Items 7 and 8 from the MPC meeting of June 25, 2009.

Item 7. Case Number 2008CP-007G-03. A request to amend the Scottsboro/Bells Bend Detailed Design Plan to include detailed policies for an area referred to as the Alternate Development Area that permits development of a mixed use town center and corporate campuses, while permanently preserving significant open space and the rural character of the remainder of Scottsboro/Bells Bend.

Item 8. Case Number 2008SP-022G-03. A request to change from AR2a to SP-MU for properties located at 3886, 3920, 3924, 3992, 4068, 4072, 4194, and 4206 Old Hickory Boulevard and Old Hickory Boulevard (unnumbered), approximately 4,700 feet south of Cleeces Ferry Road (1,487.69 acres), to create a new mixed use SP district called "May Town Center" proposed for a maximum of 8 million square feet of office uses, 600,000 square feet of retail uses, 600 hotel rooms, and 8,000 residential units, and a minimum of 900 acres of open space, requested by Civil Site Design Group, applicant, for H.T.P.C. 2 Partnership and Bells Landing Partners, owners.

Dear Mr. Giarratana:

The Planning Department has received your request for a rehearing of the above-identified case, which was acted upon at the June 25, 2009 Planning Commission meeting.

In accordance with the adopted Rules and Procedures of the Metropolitan Planning Commission (see attachment for relevant section), your request has been reviewed for merit by Chairman McLean and myself. Without making a final determination on the issue, we do not find at this time that the request is completely without merit. Therefore it will be placed on the Planning Commission's agenda for consideration.

It will be up to the Planning Commission as a whole to determine whether the information provided in your letter as to any changed conditions or new information not available to the Commission serves as a cause for rehearing this case. Consequently,

your request will be presented to the Planning Commission at their meeting of July 23, 2009.

The consideration of your request at the July 23rd meeting will not include a public hearing or receipt of any public testimony. Rather it will be to consider the request as submitted and determine whether a rehearing will or will not be scheduled at some date in the future.

Sincerely,



Richard C. Bernhardt, FAICP, CNU
Executive Director

Attachments:

Letter of July 8, 2009
Letter of July 14, 2009
Excerpts of the MPC rules

cc: The Hon. Lonnell R. Matthews, Jr., Councilmember, District 1
Mr. James McLean, Chairman, Metro Planning Commission
Mr. Doug Sloan, Esq., Metro Legal Department
Ms. Ann Hammond, Metro Planning Department
Mr. Bob Leeman, Metro Planning Department
Ms. Jennifer Carlat, Metro Planning Department
Mr. Craig Owensby, Metro Planning Department
Ms. Trish Brooks, Metro Planning Department

Attachment from the "Rules and Procedures of the Metropolitan Planning Commission":

:

K. **REHEARING.** Any aggrieved party or a Commission member may, within 60 days after a commission action, request a rehearing. The request, filed in writing by an aggrieved party or announced by a sitting Commission member at a regular meeting, must be filed or announced at least 14 days prior to the meeting at which the request will be heard. The request must state what conditions have changed or what new information is available that may serve as cause for rehearing.

1. Upon receipt of a request for rehearing, the councilmember in whose district the subject of the rehearing lies shall be notified of the request within five business days.
2. The Chairperson and the Executive Director shall review a request for rehearing for merit and determine whether the request will be heard by the full Commission. If the Chairperson and Executive Director determine that a rehearing request is without merit and should not be heard by the Commission, that decision will be noted on the Commission's next available agenda. The Commission may, by a majority vote of the members present, overrule the decision of the Chairperson and Executive Director and hear the request at a subsequent meeting.
3. If the request for rehearing is accepted by the Chairperson and Executive Director for presentation to the full Commission, a motion to rehear may be made and seconded by any member of the Commission who voted with the majority in the first action on the issue. A simple majority of the Commissioners present and constituting a quorum is sufficient to carry a motion to rehear.
4. If the motion to rehear passes, the issue may be heard at that point and action may be taken, unless the issue was originally heard at public hearing. When the issue had originally been heard at public hearing, the issue must be set for public hearing again before action is taken.

- I. **MANNER OF ACTING.** The voting on all questions coming before the Commission shall, at the discretion of the Chairperson, be by roll call or voice vote and the ayes and noes shall be entered upon the Minutes of such meeting. When the vote is unanimous, the record of a unanimous vote shall be sufficient. If a motion on a question fails, deliberation shall continue until a motion of definitive action is offered and passed.
- J. **DEFERRALS.** The Commission may defer action on any item provided the reason for deferral is reflected in the motion to defer. If an item is deferred at the request of the applicant, any time restrictions normally placed on the Commission will be suspended until the item is returned to the agenda, except when a council bill has been filed. Additional rules are established in VIII. F. 3. relating to subdivisions.
- K. **REHEARING.** Any aggrieved party or a Commission member may, within 60 days after a commission action, request a rehearing. The request, filed in writing by an aggrieved party or announced by a sitting Commission member at a regular meeting, must be filed or announced at least 14 days prior to the meeting at which the request will be heard. The request must state what conditions have changed or what new information is available that may serve as cause for rehearing.
1. Upon receipt of a request for rehearing, the councilmember in whose district the subject of the rehearing lies shall be notified of the request within five business days.
 2. The Chairperson and the Executive Director shall review a request for rehearing for merit and determine whether the request will be heard by the full Commission. If the Chairperson and Executive Director determine that a rehearing request is without merit and should not be heard by the Commission, that decision will be noted on the Commission's next available agenda. The Commission may, by a majority vote of the members present, overrule the decision of the Chairperson and Executive Director and hear the request at a subsequent meeting.
 3. If the request for rehearing is accepted by the Chairperson and Executive Director for presentation to the full Commission, a motion to rehear may be made and seconded by any member of the Commission who voted with the majority in the first action on the issue. A simple majority of the Commissioners present and constituting a quorum is sufficient to carry a motion to rehear.
 4. If the motion to rehear passes, the issue may be heard at that point and action may be taken, unless the issue was originally heard at public hearing. When the issue had originally been heard at public hearing, the issue must be set for public hearing again before action is taken.